

APPEAL NO. 031496
FILED JULY 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 22, 2002. In Texas Workers' Compensation Commission Appeal No. 023022, decided January 10, 2003, we reversed and remanded the case for reconstruction of the record. A subsequent hearing was convened for this limited purpose on May 6, 2003. The hearing officer determined that (1) the compensable injury of _____, extends to include a concussion, cervical disc herniation, and cervical radiculopathy, but it does not extend to include an ulnar nerve injury; and (2) the respondent (claimant) had disability from September 15, 2001, through the date of the hearing on October 22, 2002. The appellant (carrier) appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred in admitting the testimony of the claimant's orthopedic surgeon. The claimant urges affirmance.

DECISION

Affirmed.

We first address the carrier's assertion that the hearing officer erred in admitting the testimony of the claimant's orthopedic surgeon. The carrier concedes, in its appeal, that the claimant timely exchanged the name of his orthopedic surgeon as a potential witness in this case. However, the carrier complains that the claimant failed to designate the witness as an "expert witness," and the carrier, therefore, did not have an opportunity to prepare an appropriate rebuttal witness. Section 410.160(4) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(1)(D) (Rule 142.13(c)(1)(D)) require the exchange of only "the identity and location of any witness known to have knowledge of relevant facts." The carrier cited no authority applicable to these proceedings which requires that a witness be further designated as an "expert witness," and we are aware of none. Accordingly, we perceive no error.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ACE FIRE UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
660 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge